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After recording, return to  
(File No. 75956001)



\$72.00

12/28/2009 02:09:29 PM

Gordon R. Hanna  
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Salem OR 97308

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\$30.00 \$16.00 \$16.00 \$10.00

Until a change is requested, all tax statements  
shall be sent to the following address:

No Change

**DEVELOPMENT AGREEMENT**

**PARTIES:**

CITY OF CANBY, an Oregon  
Municipal Corporation ("City")  
182 N. Holly Street  
PO Box 930  
Canby Oregon 97013

JEAN ROVER  
195 Idylwood Drive SE ("Rover")  
Salem OR 97302

CHARLES BURDEN, Trustee  
of the Ray L. Burden Trust ("Burden")  
23230 S Highway 99E  
Canby, OR 97013

**RECITALS**

- A. Burden owns certain real property on the NE corner of Sequoia Parkway and SE 4th Avenue in the City of Canby. Rover owns property on the SE corner of the same intersection directly across the street from the Burden parcel. SE 4<sup>th</sup> Avenue to the East of Sequoia Parkway does not connect with any significant road, although there are plans to connect it to South Mulino Road at some point in the future.
- B. Burden has obtained land use approval from the City of Canby to partition his parcel. A condition of approval is the construction of a half street improvement on the North half of SE 4<sup>th</sup> Avenue between the Burden and Rover parcels. The Rover parcel has improvements that extend into the right-of-way that consist of fences and other improvements. The construction by Burden of the half street improvement would result in destruction of the fences in this right-of-way area.

- C. The parties agree that there is no current need for the half street improvement to extend so far south as to destroy the improvements in this right-of-way area. They have this understanding because of the limited use of SE 4<sup>th</sup> Avenue given the current configuration of streets in the City of Canby.
- D. Rover, in order to preserve the improvements in this right-of-way area until improvement of SE 4<sup>th</sup> Avenue is required, has agreed to complete a portion of the half street improvement required by Burden at the time her property is otherwise developed.

NOW, THEREFORE, IT IS AGREED

1. **Recitals.** The recitals above are incorporated herein by this reference.
2. **Waiver of Strict Performance.** The City, in consideration of the other agreements contained herein, waives the requirement that Burden fully comply with all conditions of approval for his land use approval contained in his partition approval for the property on the NE corner of Sequoia Parkway and SE 4<sup>th</sup> Avenue. Specifically, the City agrees to approve the half street improvement may be built so that it terminates six feet (6 ft.) North of the expected center line of SE 4<sup>th</sup> Avenue. Upon a completion of the SE 4<sup>th</sup> Avenue improvements terminating six feet (6 ft.) North of the center line of the expected street improvement, Burden will have no further obligation for construction improvements on SE 4<sup>th</sup> Avenue.
3. **Agreement to Construct.** In consideration of the promises contained herein, Rover agrees that at the time she improves her property located on the SE corner of Sequoia Parkway and SE 4<sup>th</sup> Avenue, or at such time as SE 4<sup>th</sup> Avenue is otherwise extended, she will build, at her sole cost and expense, so much of that portion of SE 4<sup>th</sup> Avenue North of the center line, as Burden is not required to construct under the terms of this Agreement. If the construction is done pursuant to a Local Improvement District organized under the Ordinance of the City of Canby, Rover agrees that she will not remonstrate against formation of the Local Improvement District and will contribute the funds to the Local Improvement District necessary to complete that portion of SE 4<sup>th</sup> Avenue North of the center line, as Burden is not required to construct under the terms of this Agreement.

The Rover obligation, as contained in this paragraph shall be a restrictive covenant binding on the heirs, successors, and assigns of the Rover parcel as described on the attached **Exhibit "A"**. Rover consents to the recordation of this Agreement to give notice to any subsequent purchaser of the additional obligation to improve SE 4<sup>th</sup> Avenue.

Furthermore, Rover hereby expressly waives any and all rights to remonstrate against the formation of any improvements district to complete the roadway improvements. Rover, her successors and assigns, expressly reserves the following rights related to the creation of an improvement district and/or construction of the roadway improvements on SE 4<sup>th</sup> Ave:

3.1 The right to protest or otherwise object to the costs of such project which are determined to be assessable to the Rover property and/or apportionment of such costs among the benefited properties;

3.2 The right to contest any just compensation for additional right of way if the City improves the street prior to development of the Rover property; and

3.3 The right to contest any development condition or exaction associated with the development of the Rover property, including exactions or conditions related to SE 4<sup>th</sup> Avenue.

**4. Use of Due Care.** The City agrees that in the construction of the half street improvement on SE 4<sup>th</sup> Avenue, consistent with this Agreement, they will make clear to any contractor working for them that they are to use due care to avoid any damage to the improvements on the right-of-way area.

**5. No Adverse Impact on Burden.** The City agrees that Burden shall not suffer any adverse impact on account of this Agreement. The Burden parcel will be treated as though all conditions for its partition have been fulfilled. After Burden completes the SE 4th Street improvements required by this Agreement, and those improvements are accepted by the City, it shall be deemed for all purposes that Burden has fully constructed the half street improvement on SE 4th Street. Furthermore, the City agrees that there shall be no adverse impact on any future uses of the Burden parcel as a result of the fact that this Agreement was made.

**6. No Further Waiver or Modification.** Except as specifically waived or modified under the terms of this Agreement, the terms and conditions of approval for the partition by Burden of his parcel shall remain in full force and effect. Other than the changes to the extent of improvement on the half street no changes have been made regarding the requirements for the improvements actually made.

**7. Entire Agreement.** This writing contains the entire Agreement of the parties related to this matter. Modification of this Agreement shall be permitted, but only in writing and signed by the party to be charged.

DATED this 1<sup>st</sup> day of December, 2009.

**CHARLES E. BURDEN,**  
Trustee of the Ray L. Burden Trust

*Charles E. Burden Trustee*

**JEAN M. ROVER**

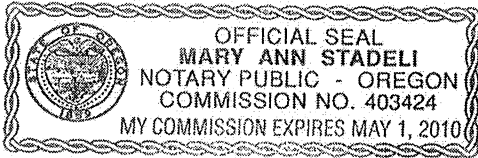
*Jean M. Rover*

**CITY OF CANBY**

By: *Amanda Klock*  
Amanda Klock, Interim City Administrator

STATE OF OREGON )  
 ) ss.  
County of Marion )

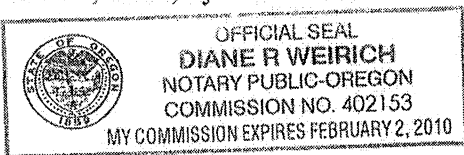
The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of November, 2009, by Jean M. Rover.



Mary Ann Stadel  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: 5-1-2010

STATE OF OREGON )  
 ) ss.  
County of Clackamas )

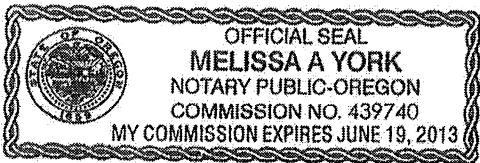
The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of ~~November~~ December, 2009, by Charles E. Burden.



Diane R Weirich  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: Feb 2, 2010

STATE OF OREGON )  
 ) ss.  
County of Clackamas )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of ~~November~~ December, 2009, by Amanda Block, Interim City Administrator of the City of Canby.



Melissa A York  
NOTARY PUBLIC FOR OREGON  
My Commission Expires: June 19, 2013

**EXHIBIT "A"**  
**Legal Description**

That certain real property situated in the County of Clackamas, State of Oregon, described as follows, to-wit:

A part of Government Lot 8, Section 34, T3S, R1E, W.M., Clackamas County, Oregon, more particularly described as follows: A certain tract of 5 acres of land off the North end of the tract of land conveyed to Sam Miller and Ella Miller, his wife, by Deed recorded May 3, 1919 in Book 152, Page 585, Deed Records, in the County of Clackamas and Statue of Oregon. Said dividing line being parallel with the Southerly line of the Philander Lee DLC.  
(Assessor's Acct. #798104; T3S-R1E, Section 34, Tax Lot 02500.)

**SUBJECT TO:**

Boundary Line Agreement recorded August 6, 2007, Document No. 2007 068110, Clackamas County Records. Said dividing line shall be more particularly described as follows:

Commencing at the Southeast corner of said Section 34; thence North  $89^{\circ} 38' 15''$  West along the South line of said Section 34, a distance of 551.22 feet to a point; thence North  $00^{\circ} 11' 00''$  West a distance of 20.00 feet to a point on the North right-of-way line of Township Road, and the true point of beginning of the agreement line herein described; thence continuing along North  $00^{\circ} 11' 00''$  West a distance of 1260.51 feet to a point on the Southerly line of the Philander Lee Donation Land Claim, and the terminus of said agreement line.

**SAVE AND EXCEPT:**

A portion of that tract of land conveyed to Jean M. Rover in deed recorded under fee number 98-073646 Clackamas County Deed Records, in Section 34, Township 3 South, Range 1 East of the Willamette Meridian, more particularly described as follows: Beginning at the northwest corner of that parcel conveyed to Jean M. Rover under said fee number, said point also being 15 feet east when measured perpendicular to the centerline of the north-south portion of South Walnut Street; thence westerly along the northern boundary of said Rover tract 46.36 feet; thence south easterly in an alignment perpendicular to the northern boundary of said Rover tract a distance of 17.30 feet; thence along a non-tangent curve left with radius 44 feet and arc length of 57.89 feet to a point of tangency that is 31 feet east of the centerline of South Walnut Street; thence south 61.58 feet paralleling said centerline to a point of curvature; thence along a curve right with a radius 331 feet and arc length 85.32 feet to a point of reverse curve; thence along a curve left with radius 269 feet and arc length of 27.66 feet to a point on the eastern right of way line of South Walnut Street, said point being 15 feet east when measured perpendicular to the centerline of South Walnut Street, thence

north along the western property line of said Rover tract and the eastern right of way line of South Walnut Street to the point of beginning, said dedication containing 3,688 square feet more or less.

**SUBJECT TO:**

Additionally, a 12 foot wide public utility easement shall be created parallel and abutting the westerly boundary line of said Rover tract described above, said easement containing 3,657 square feet more or less.